WONG SU TIUNG, RE: EX P; YEO HIAP SENG TRADING SDN. BHD.

HIGH COURT SABAH & SARAWAK, KUCHING
HAIDAR MOHD. NOOR J
[IN BANKRUPTCY NO. 18 OF 1986]
9 FEBRUARY 1989

BANKRUPTCY: *Validity of bankruptcy notice - Whether interest should be quantified in the bankruptcy notice - Section 3(1) Bankruptcy Act 1967.*

The creditor issued a notice for an order adjudging the debtor bankrupt. On the date of hearing the Court intimated to the learned Counsel for the petitioning creditor whether the bankruptcy notice itself was valid having regard to the decision of the Supreme Court in the case of *Low Mun v. Chung Khiaw Bank Ltd*. [1988] 1 MLJ 263. The issue was whether the interest element should be quantified in monetary terms.

Held:

[1] If the interest is not quantified into the correct amount then the debtor is in no position to know exactly what is being claimed to be due and payable by him within the seven-day period and it follows therefore that the amount claimed is ambiguous or unascertained in which event it is not imposed upon him to make inquiries.

[2] A liquidated sum must be stated in the bankruptcy notice and applying the rule of strict construction, the notice in this case cannot be deemed to fall within s. 3(1)(i) of the Bankruptcy Act and following *Low Mun's* case, the bankruptcy notice was a nullity *ab initio* and the debtor is entitled to succeed.

[Petition struck out.]

Case referred to:
Low Mun v. Chung Khiaw Bank Ltd. [1987] CLJ (Rep) 172

Legislation referred to:
Bankruptcy Act 1967, s. 3(1)(i)
Bankruptcy Rules 1969, r. 99

For the petitioning creditor - W.T. Voon; M/s. Yong & Co.
For the official assignee - Abdul Latip, Assistant Official Assignee
For the debtor - in person

JUDGMENT

Haidar Mohd. Noor J:

A bankruptcy notice (encl. 4) dated 22 January 1986 was filed against Wong Su Tiung of Lot 510, Jalan Padungan, Kuching ("the debtor") by Yeo Hiap Seng Trading Sdn. Bhd. of 4th Mile Pending Road, Kuching ("the creditor') in the High Court, Kuching.

The facts: -

The bankruptcy notice was served personally on the debtor on 5 February 1986. On 31 March 1986 the creditor filed a creditor's petition (encl. 8) under r. 99 of the Bankruptcy Rules 1969 ('the Rules') that a receiving order may be made in respect of the estate of the debtor and the said creditor's petition was served on the debtor personally on 14 May 1986. On 16 June 1986 a receiving order was made against the debtor and the official assignee was constituted receiver of the estate of the debtor. The said receiving order was served on the debtor personally by the process server of the official assignee's department on 24 July 1986.

The said receiving order was accordingly advertised in the newspaper, the Sarawak Tribune on 26 July 1986 and also in the Sarawak Government Gazette. Subsequently a public examination was heard by the Senior Assistant Registrar on 9 January 1987 wherein, the debtor was ordered to pay RM50 per month to the official assignee for benefit of his creditors, the first payment to commence on first working day of February 1987 and thereafter on the first working day of each subsequent month. In addition the debtor is to surrender his Malaysian Passport to the official assignee with liberty to apply. However, at the first creditor's meeting on 18 September 1986 at the official assignee's office it was unanimously resolved that the debtor be adjudged bankrupt and that the petitioning creditor to apply to the Court to make the adjudication. Pursuant to the said resolution the creditor issued a notice dated 14 October 1988 for an order adjudging the debtor, bankrupt. The said notice was served on the debtor personally on 22 October 1988 and the said matter came for hearing on 1 December 1988. On the said date of hearing of the said matter the Court intimated to the learned Counsel for the petitioning creditor whether the bankruptcy notice itself was valid having regard to the decision of the Supreme Court in the case of *Low Mun v. Chung Khiaw Bank Ltd.* [1987] CLJ (Rep) 172. Learned Counsel requested for time to study the said case and the Court adjourned the hearing to 30 January 1989 for the learned Counsel to make a submission.

On 30 January 1989 learned Counsel sought to distinguish the Supreme Court case with this case. In this case, he said that the costs have been quantified and I think there is no quarrel about that. The real issue here is whether the interest element should be quantified in monetary terms. The learned Counsel was of the view that it need not be so and sought to rely on the passage at para. F of p. 177 of the judgment. In that case the interest was not specified as compared to this case. If I understand Mr. Voon correctly what he is saying is that so long as the interest is specified i.e., the rate is spelt out in the bankruptcy notice then the debt is capable of being quantified and hence the bankruptcy notice is valid and it has accordingly complied with s. 3(1)(i) of the Bankruptcy Act 1967. It is best, I think, to examine closely the judgment of the Supreme Court to see whether there is substance in the reasoning of Mr. Voon. In essence the Supreme Court stated as follows:

(a) the demand be limited only to the principal sum,

(b) both the interests and costs should have been left out altogether and when their amounts had been ascertained, they could, before adjudication, be made subject of a separate bankruptcy notice,

(c) in any event, any balance of a judgment debt, including interests and costs not demanded in the notice, could subsequently be proved in bankruptcy to the official assignee under Part III of the Bankruptcy Act.

The Supreme Court at p. 177 para. D expressed its opinion as follows:

> Consequently, we are of the view that when you have the judgment in the usual form that we have here, a bankruptcy notice under the Act must require payment of **quantified sum or sums** alleged to be due according to the terms of the judgment as at the date of issue of bankruptcy notice. (Emphasis is mine)

In the latter part of the same paragraph the Supreme Court went further to state:

> The amount must be quantified because the debtor is entitled to know from the bankruptcy notice exactly what is being claimed to be due on the whole judgment debt and payable by him within the seven-day period.

It would appear therefore that the use of the words amount" and "quantified sums or sums" necessarily imply monetary terms and in my view, to follow Mr. Voon's reasoning that the rate of interest stated in the notice could be quantified into monetary terms would be stretching the reasoning a bit too far so as to impose a duty on the debtor to make inquiries as to the amount claimed and in this respect the Supreme Court in the same paragraph said:

> The duty is on the creditor to state the **correct amount** due and there is no obligation imposed on the debtor to make inquiries if the amount demanded is ambiguous or unascertained. (emphasis is mine)

If the interest is not quantified into the correct amount then the debtor is in no position to know exactly what is being claimed to be due and payable by him within the seven-day period and it follows therefore that the amount claimed is ambiguous or unascertained in which event it is not imposed upon him to make inquires. The Supreme Court at p. 267 was very emphatic about the interests and costs having to be quantified when it said:

> Thus, on the date of issue of bankruptcy notice, it could not be said of the judgment on the interests and the costs that they constituted a judgment debt presently payable to the creditor, for they had not been **quantified into a liquidated sum**. (emphasis is mine)

If we examine form 5 in the Rules relating to bankruptcy notice it could be clearly seen at line three thereof that a definite sum need to be specified therein. It is thus clear therefore that a liquidated sum must be stated in the bankruptcy notice and applying the rule of strict construction, the notice in this case cannot be deemed to fall within s. 3(1)(i) of the Bankruptcy Act and following *Low Mun's* case, *supra*, the bankruptcy notice was a nullity *ab initio* and the debtor is entitled to succeed. Even though the debtor in this case has not challenged the validity of the bankruptcy notice, Mr. Voon conceded that the Court can inappropriate cases in the face of errors of laws on the record before it, make the necessary orders as to the Court deems fit in order to do justice of the case.

In the circumstances and for the reasons set out by me, I have no hesitation in striking out the creditors petition and accordingly do so with no order as to costs.

Also found at [1989] 2 CLJ 691